STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES
VOLUME PRICING CONTRACT
BindView Development Corporation

This **VOLUME PRICING CONTRACT** for the acquisition of security products and related services is entered into between the State of Texas, acting by and through the Department of Information Resources with its principal place of business at 300 West 15th Street, Suite 1300, Austin, Texas 78701, and BindView Development Corporation, with its principal place of business at 5151 San Felipe, Houston, Texas 77056.

1. **Contract Scope and Term**
    This Contract sets forth the terms and conditions governing the acquisition of security products and related services. Terms used in this document shall have the meanings set forth below in Section 2, Definitions. This Contract is available for use by all Customers.

    The term of this Contract shall be two (2) years commencing on the last date of approval by the parties. Prior to expiration of the original term, the parties may renew this contract, upon approval of DIR, for up to two (2) optional one-year terms. Upon termination of this Contract, all rights and obligations set forth herein shall survive in accordance with their terms as to procurements made by Customers prior to such termination.

2. **Definitions**
    Terms used in this Contract shall have the following meanings:

    A. **DIR** - the Department of Information Resources.
    B. **Customer** - any Texas state agency and local government as defined in Section 2054.003, Texas Government Code (including institutions of higher education as defined in Texas Education Code, Section 61.003), and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code.
    C. **Manufacturer** –BindView Development Corporation
    D. **Product** – any security item manufactured or produced by the Manufacturer. Product may include any pre-loaded software necessary for operation.
    E. **Services** – any value-added service that the Manufacturer may perform as related to products available under this Contract. For example: warranty, support services, installation, and product training.
    F. **State Contract Administrator** - the individual as appointed by DIR to administer this Contract on behalf of the State of Texas and the Customers.
    G. **Manufacturer Contract Administrator** - the individual as appointed by the Manufacturer to administer this Contract on behalf of the Manufacturer.
    H. **Administrative Fee** - the fee used to defray DIR's cost of negotiating, executing and administering this contract.
    I. **Purchase Order** - the Customer's fiscal form or format, which is used when making a purchase (e.g., formal written Purchase Order, Procurement Card, Electronic Purchase Order, or other authorized instrument).
    J. **Information Resources Technology (Technologies)** – as defined in Texas Government Code §2054.003.

K. Day - shall mean business days, Monday through Friday, except for State and Federal holidays. If the Contract calls for performance on a day that is not a business day, then performance is intended to occur on the next business day.

L. State – refers to the State of Texas.

M. Go DIRect Coordinator – refers to the individual appointed by DIR to administer and collect the contract reporting data on behalf of the State and the authorized Customers.

3.   Entire Agreement and Order of Precedence

This Contract; Appendix A, Standard Clauses for Texas DIR Contracts; Appendix B, Manufacturer's Historically Underutilized Businesses Subcontracting Plan; Appendix C Software License and Service Agreement; and Appendix D, Pricing Index constitute the entire agreement between the parties hereto. In the event of a conflict between the documents listed in this paragraph, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, and finally Appendix D. No statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid. This Contract shall not be changed, modified or altered in any manner except by an instrument in writing executed by both parties hereto, with the approval of DIR.

The terms and conditions set forth herein shall govern all transactions by Customers under this Contract. Customers shall not have the authority to modify the terms of this Contract, except as to receive better terms or pricing for a particular procurement than those set forth herein. In such event, Manufacturer shall furnish a copy of such better offerings to DIR upon request. No additional term or condition of a purchase order issued by a Customer can weaken a term or condition of this Contract. In the event of a conflict between a Customer's purchase order and this Contract, the Contract term shall control.

4.   Product and Service Offerings

Products available under this Contract are set forth as any Information Resource Technology item manufactured and produced by the Manufacturer. Services include any value-added service that the Manufacturer may perform as related to products available under this Contract.

A. Products

Manufacturer will maintain a product list including pricing, product descriptions, and product specifications for all products offered under this Contract. The product list may be updated at any time during the term of this Contract to incorporate product model changes or product upgrades, addition of new products, and removal of obsolete or discontinued products.

B. Services

Examples of service include, but are not limited to: warranty, support services, installation, and product training. Manufacturer will maintain a list including pricing and descriptions for all services offered under this Contract. The services list may be updated at any time during the term of this Contract to incorporate changes to the service offering.

5.   Contract Administration

DIR and the Manufacturer will each provide a Contract administrator to support this Contract. Information regarding the Contract administrators will be posted on the Internet web site designated for this Contract.

A. State Contract Administrator

DIR shall provide a Contract administrator whose duties shall include but not be limited to: i) supporting the marketing and management of this Contract, ii) advising DIR of

Manufacturer's performance under the terms and conditions of this Contract, and iii) periodic verification of product pricing and monthly reports submitted by Manufacturer.

B. Manufacturer Contract Administrator

Manufacturer shall provide a dedicated Contract administrator whose duties shall include but not be limited to: i) supporting the marketing and management of this Contract, ii) facilitating dispute resolution between Manufacturer and a Customer, and iii) advising DIR of Manufacturer's performance under the terms and conditions of this Contract. DIR reserves the right to require a change in Manufacturer's then-current contract administrator if the assigned administrator is not, in the opinion of DIR, adequately serving the needs of the State.

6. **Pricing**

The price to the Customer under this Contract will be established by the Manufacturer and shall be the lowest price offered through Manufacturer to any Texas governmental entity for the same Product or Service. Any violation of this provision may result in this Contract being terminated.

A. Customer Discount

Based on a quantity of one (1), the Customer discount from the Manufacturer for all products and services will be a percentage off Manufacturer's List Price, or Pricing Index as attached in Appendix D. Customer may negotiate more advantageous pricing for large volume purchases with the Manufacturer.

B. DIR Administrative fee

The DIR administrative fee specified in Section 11, Reporting and Administrative Fees, shall be included in the pricing set forth herein. The administrative fee shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

C. Shipping and Handling Fees

The price to the Customer under this Contract shall include all shipping and handling fees. Shipments will be F.O.B. Customers destination. No additional fees shall be charged to the Customer for standard shipping and handling. If the Customer requests expedited delivery, Customer will be responsible for any charges for expedited delivery.

D. Tax-Exempt

As per Section 151.309, Texas Tax Code, Customers under this Contract are exempt from the assessment of State sales, use and excise taxes. Further, Customers under this Contract are exempt from Federal Excise Taxes, 26 USC Secs. 4253(i) and (j).

E. Changes to Prices

Manufacturer may change the price of any product or service at any time, based upon changes to the List Price, but discount levels shall remain consistent with the discount levels specified in Paragraph A, Customer Discount, of this Section. Price decreases shall take effect automatically during this Contract term and Manufacturer shall pass all price decreases on to the Customer.

Manufacturer may make product model changes and add new products or product upgrades at any time and the pricing for the same shall incorporate comparable price discount levels as specified in Paragraph A, Customer Discount of this Section.

7. **Order Processing and Payments**

    All Customer purchase orders will be placed directly with the Manufacturer. Accurate purchase orders shall be effective and binding upon Manufacturer when accepted by the Manufacturer transmitted prior to the termination of this Contract period.

    Invoices shall be submitted by the Manufacturer directly to the Customer and shall be issued by the Manufacturer in compliance with Chapter 2251, Texas Government Code. All payments for products and/or services purchased under this Contract and any provision of acceptance of such products and/or services shall be made to the Manufacturer by the Customer.

    Invoices must be timely and accurate. Each invoice must match Customer's order and include any written changes that may apply, as it relates to products, prices and quantities. Invoices must include the Customer's purchase order number or other pertinent information for verification of receipt of the order by the Customer.

    State agency Customer(s) shall comply with Chapter 2251, Texas Government Code, in making payments to Manufacturer. Payment under this contract shall not foreclose the right to recover wrongful payments.

8. **Software Licensing Agreement**

    Customers purchasing software licenses under this Contract shall hold, use and operate such software subject to compliance with the Software Licensing Agreement set forth in Appendix C hereto. No changes to the Software License Agreement Terms and Conditions may be made unless previously agreed to between Manufacturer and DIR. Customers may not add, delete or alter any of the language in Appendix C. Manufacturer shall make the Software Licensing Agreement terms and conditions available to all Customers at all times.

    Compliance with the Software Licensing Agreement is the responsibility of the Customer. DIR shall not be responsible for any Customer's compliance with the Software Licensing Agreement. If DIR purchases software licenses for its own use under this Contract, it shall be responsible for its compliance with the Software Licensing Agreement terms and conditions.

9. **Service Agreement**

    Customers purchasing services under this Contract shall execute a Software License Service Agreement with Manufacturer as set forth in Appendix C hereto. No changes to the Software License Service Agreement terms and conditions may be made unless previously agreed to by Manufacturer and DIR. The Service Agreement shall include Service Level Descriptions for related products.

10. **Internet Access to Contract and Pricing Information**

    Access by Customers to Contract terms and pricing information shall be made available and posted on the Internet. To that end, upon sixty (60) days from execution of the Contract, Manufacturer will be required to host the complete Contract product and service offerings, including pricing, at Manufacturer's Internet site. Internet access to this information will be provided including all subsequent changes to the product and services offerings and pricing during the term of this Contract at no cost to DIR, the State, and Customers.

    A. **Accurate and Timely Contract Information**

       Manufacturer warrants and represents that Contract and related information will be accurately and completely posted, maintained and displayed in an objective and timely manner which renders it clearly distinguishable from other, non-Contract offerings at Manufacturer's web

site. Manufacturer shall indemnify DIR, the State, and Customers for damages resulting from errors or inaccuracies in such information, or from any failure to maintain or timely post Contract information in accordance with this paragraph.

B. Price Data Retention and Compliance Checks

Periodic Compliance Checks of the information posted for this Contract on Manufacturer's web site will be conducted by DIR. Upon request by DIR, Manufacturer shall provide verifiable documentation that pricing listed upon this site is uniform with the Customer Discount as stated in Section 6, Paragraph A.

C. Web Site Changes

Manufacturer hereby consents to a link from the DIR web site to Manufacturer's web site in order to facilitate access to Contract information. The establishment of the link is provided solely for convenience in carrying out the business operations of the State. DIR reserves the right to terminate or remove a link at any time, in its sole discretion, without advance notice, or to deny a future request for a link. DIR will provide Manufacturer with subsequent notice of link termination or removal. Manufacturer shall provide DIR with timely written notice of any change in URL or other information needed to access the site and/or maintain the link.

D. Use of Access Data Prohibited

If Manufacturer stores, collects or maintains data electronically as a condition of accessing State Contract information, such data shall only be used internally by Manufacturer for the purpose of implementing or marketing the State Contract, and shall not be disseminated to third parties or used for other marketing purposes. This Contract constitutes a public document under the laws of the State and Manufacturer shall not restrict access to the Contract terms and conditions including pricing, i.e., through use of restrictive technology or passwords.

E. Responsibility for Content

Manufacturer is solely responsible for administration, content, intellectual property rights, and all materials at Manufacturer's web site. Manufacturer is solely responsible for its actions and those of its agents, employees, or subcontractors, and agrees that neither Manufacturer nor any of the foregoing has any authority to act or speak on behalf of DIR or the State.

F. On-line Price Configurator

Manufacturer may be required to make available an on-line configurator at its Contract web site. Directions and assistance in using the configurator and web site in general must be available at entry. This configurator must enable Customers to: (i) view the options available for the type of product or service requested, (ii) search and find products or services offered under this Contract, (iii) calculate complete acquisition costs. Information consistent with the terms of this Contract about payment, shipping, returns, delivery terms and special pricing shall be available. Customers shall have the option of printing their "shopping cart" choices. For those users who are positioned to use it, Manufacturer shall make available an option for on-line secure ordering.

11. **Reporting and Administrative Fees**

Manufacturer shall be responsible for reporting all products and services purchased through Manufacturer under this Contract. The failure to file the monthly reports, subcontract reports, and pay the administrative fees on a timely basis will constitute grounds for suspension or termination of the contract for cause. If Manufacturer submits three (3) consecutive monthly reports incorrectly, DIR reserves the right to suspend or terminate this contract for cause. Manufacturer's

liability for any breach of this section is limited to the amount of administrative fees owed to DIR by Manufacturer.

DIR shall have the right to verify required reports and to take any actions necessary to enforce its rights under this section, including but not limited to, compliance checks of Manufacturer's applicable Contract books.

A. Detailed Monthly Report

Manufacturer shall electronically provide DIR with a detailed monthly report in the format required by DIR showing the dollar volume of any and all sales under this Contract for the previous month period. Reports shall be submitted to the DIR Go DIRect Coordinator. Reports are due on the fifteenth (15th) day after the close of the previous month period. It is the responsibility of Manufacturer to collect and compile all sales under this Contract and submit one (1) monthly report. The monthly report shall include the period, each Customer name, order date, ship date, description, part numbers, manufacturer, quantity, unit price, extended price, Customer's purchase order number, contact name, Customer's complete billing address, and other information as required by DIR. Each line item sale must contain all information listed above or the report will be rejected and returned to the Manufacturer for correction.

B. Historically Underutilized Business Subcontract Reports

Manufacturer shall electronically provide each Customer with their relevant Historically Underutilized Business Subcontracting Report, pursuant to this Contract, as required by Chapter 2161, Texas Government Code. Reports shall also be submitted to DIR.

Reports shall be due quarterly in compliance with the following schedule, or as requested by each ordering Customer:
September – November: due by December 5th
December – February: due by March 5th
March – May: due June 5th
June – August: due September 5th

C. DIR Administrative Fee

An administrative fee shall be paid by Manufacturer to DIR to defray the DIR costs of negotiating, executing, and administering this Contract. All prices quoted to Customers shall include the administrative fee. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon written notice to the Manufacturer. Any change in the administrative fee shall be incorporated in the price to the Customer.

Manufacturer will pay DIR, on the fifteenth (15th) day after the close of the previous month period, a two percent (2%) administrative fee based on the dollar value of all sales to the Customers pursuant to this Contract. Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling $100,000 shall be $2,000.

12. **Notices**
All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to this Contract shall be in writing and shall be validly given on i) the date of delivery if delivered by email, facsimile transmission, mailed by registered or certified mail, or hand delivered, or (ii) three business days after being mailed via United States Postal Service. The parties may from time to time, specify any address in the United States as its address

for purpose of notices under this Contract by giving fifteen (15) days written notice to the other party.

If sent to the State:
Patrick W. Hogan
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 475-4700
Fax: (512) 475-4759
Email: patrick.hogan@dir.state.tx.us

If sent to the Manufacturer:
D.C. Toedt III, General Counsel
BindView
5151 San Felipe
Houston, Texas 77056
Phone: (713) 561-4001
Fax: (713) 561-1001
Email: dc.doedt@bindview.com

13. Captions
The captions contained in this Contract are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision thereof.

14. Choice of Law
The law of the State of Texas shall govern the construction and interpretation of this Contract. Nothing herein shall be construed to waive the state's sovereign immunity.

IN WITNESS WHEREOF, the parties therefore hereby execute their mutual agreement to the terms of this Contract. This agreement shall be executed and shall be a binding Contract between the parties.

BindView Development Corporation

Authorized By: _____

Name: __David S. Flame__

Title: Vice President, Americas Sales & Field Operations

Date: __4/9/03__

APPROVED
AS TO FORM
LEGAL
DCT 3/03

The State of Texas, acting by and through the Department of Information Resources

Authorized By: __Patrick W Hogan__

Name: __Patrick W. Hogan__

Title: __Director of Business Operations__

Date: __3/31/03__

Legal: _____ 3/31/03

APPENDIX A

STANDARD CLAUSES
STATE OF TEXAS, DIR CONTRACTS

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STANDARD CLAUSES FOR TEXAS DIR CONTRACTS

The parties to the attached Contract, amendment or other agreement of any kind (hereinafter, "this Contract") agree to be bound by the following clauses which are hereby made a part of this Contract. Manufacturer shall be fully liable for performance and compliance with the clauses herein.

1. INDEMNIFICATION CLAUSE.

Manufacturer shall defend, indemnify and hold harmless the State of Texas, its officers, agents, and employees from and against all claims, actions, suits, demands, proceeding, costs, damages and liabilities, including attorneys fees, arising out of, or resulting from any acts or omissions of the Manufacturer or its agents, employees, subcontractors, or suppliers of subcontractors in the execution or performance of this Contract and any Purchase Order(s) issued under this Contract.

The Manufacturer shall defend, indemnify and hold harmless the State of Texas, its officers, agents and employees, from any and all claims involving infringement of patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the use of any product or service supplied by the Manufacturer. Manufacturer agrees to defend against any and all such claims at Manufacturer's expense, whether or not such claims become the subject of litigation. DIR will provide reasonable assistance in the defense of such claims if so requested by the Manufacturer. Manufacturer agrees to coordinate defense with the Texas Office of Attorney General, as may be requested by DIR.

2. NON-ASSIGNMENT CLAUSE.

This Contract shall be entered into and be binding upon the successors of the parties. Except as provided in Section 9.9 of Appendix C, BindView Master License Agreement (93.3267), Manufacturer may not assign this Contract without the prior written consent of DIR, and any attempt to do so shall be null and void.

3. NO QUANTITY GUARANTEES.

This Contract is not exclusive to the named Manufacturer. Customers may obtain Information Resources Technologies from other sources during the Contract term. DIR makes no express or implied warranties whatsoever that any particular number of Purchase Orders will be issued or that any particular quantity or dollar amount of Information Resources Technologies will be procured through the Contract.

4. CONFIDENTIALITY CLAUSE.

Manufacturer acknowledges that DIR is a government agency subject to the Texas Public Information Act. Manufacturer also acknowledges that DIR will comply with the Public Information Act, and with all opinions of the Texas Attorney General's office concerning this Act.

Under the terms of this Contract, DIR may provide Manufacturer with information related to Customers. Manufacturer shall comply with all State of Texas privacy policy guidelines, including, but not limited to, the requirement that Manufacturer shall not re-sell or otherwise distribute or release to any party in any manner, Customer information.

5. MANUFACTURER CERTIFICATIONS.

Manufacturer certifies (i) it has not given, offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract; (ii) it is not currently delinquent in the payment of any franchise tax owed the State of Texas and is not ineligible to receive payment under §31.006 of the Texas Family Code and acknowledges this Contract may be terminated and payment withheld if this certification is inaccurate; (iii) neither it, nor anyone acting for it, has violated the antitrust laws of the United States or the State of Texas, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage; (iv) it has not received payment from DIR or any of its employees for participating in the preparation of this Contract; (v) it is not ineligible to receive this Contract under § 2155.004, Texas Government Code; (vi) it is in compliance with §618.003, Texas Government Code; (vii) it will comply with §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of this Contract; and (viii) to the best of the Manufacturer's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting the Manufacturer, which if determined adversely to the Manufacturer will have a material adverse effect on the ability of the Manufacturer to fulfill its obligations under this Contract.

6. EQUAL OPPORTUNITY COMPLIANCE.

Manufacturer agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the State in which its primary place of business is located. In accordance with such laws, regulations, and executive orders, the Manufacturer agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by Manufacturer under this Contract. If Manufacturer is found to be not in compliance with these requirements during the term of this Contract, Manufacturer agrees to take appropriate steps to correct these deficiencies. Upon request, Manufacturer will furnish information regarding its nondiscriminatory hiring and promotion policies, as well as specific information on the composition of its principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision-making authority.

7. TECHNOLOGY ACCESS CLAUSE, AS REQUIRED BY §2157.005, TEXAS GOVERNMENT CODE. (Applicable to State Agency Purchases Only)

Manufacturer expressly acknowledges and agrees that State funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, the Manufacturer represents and warrants to DIR and each Customer purchasing products under this Contract that the technology provided hereunder is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology of: (i) providing equivalent access for effective use by both visual and non-visual means; (ii) presenting information, including prompts used for interactive communications, in formats intended for non-visual use; and (iii) being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired. For the purposes of this section, the phrase "equivalent access means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans with Disabilities Act or similar state or federal laws. Examples, of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical display and customizable display appearance.

8. COMMODITY SOFTWARE. Texas Government Code, §2157.068 requires State agencies to buy commodity software in accordance with contracts developed by DIR, unless the agency obtains a waiver from DIR. Manufacturer shall agree to coordinate all agency commodity software sales made pursuant to this Contract through existing DIR contracts, if available. Manufacturer represents it will not license through a signed or unsigned license agreement, volume licensing agreement or an order confirmation, the commodity software to state agencies unless the agency is able to provide a DIR granted waiver that the agency is able to purchase the commodity software outside the DIR Commodity Software contracts. The operating system software and institutions of higher education are not bound to this Code.

9. RECORDS. The Manufacturer shall maintain adequate records to establish compliance with this Contract until the later of a period of four years after termination of this Contract or until full, final and unappealable resolution of all compliance checks or litigation issues that arise under this Contract. Such records shall include identification of the procuring Customer, documentation of the Customer's ordering date, Customer Purchase Order number, order date of product or service, ship date or service delivery date, full invoice address, unit price, extended price, record of procuring Customer payment and/or balance due, the calculations supporting each administrative fee owed DIR under this Contract, Historically Underutilized Businesses Subcontracting reports, and such other documentation as DIR may request.

Manufacturer shall grant access to all paper and electronic records, books, documents, accounting procedures, practices and any other items relevant to the performance of this Contract to DIR, the auditors designated by DIR, including auditors of the State Auditor' Office and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, auditing and/or copying such books and records. Copies and printouts requested by DIR shall be provided by Manufacturer without charge. DIR shall provide Manufacturer ten (10) business days' notice prior to inspecting, auditing, and/or copying Manufacturer's records. Manufacturer's records, whether paper or electronic, shall be made available during regular office hours. Manufacturer personnel familiar with the Manufacturer's books and records shall be available to DIR staff and designees as needed. Manufacturer shall provide adequate office space to DIR staff during the performance of a compliance check.

If any inspection or compliance check performed hereunder reveals an aggregate overcharge to a Customer of .5% or greater, or an aggregate underpayment to DIR of its administrative fee of .5% or greater, then the cost of such compliance check or inspection, including, but not limited to, the salary and associated overhead of DIR staff performing the compliance check or inspection, but not to exceed an aggregate of $5,000, shall be reimbursed to DIR within thirty (30) days from receipt of an invoice from DIR reflecting the cost of the compliance check or inspection.

For procuring State Agencies whose payments are processed by the Texas Comptroller of Public Accounts, the volume of payments made to Manufacturer through the Texas Comptroller of Public Accounts and the administrative fee based thereon shall be presumed correct unless Manufacturer can demonstrate to DIR's satisfaction that Manufacturer's calculation of DIR's administrative fee is correct.

10. ABILITY TO CONDUCT BUSINESS IN TEXAS. The Manufacturer is an entity authorized and validly existing under the laws of its state of organization, and is authorized to do business in the State of Texas. The Manufacturer is a "Qualified Information Systems Manufacturer" as defined in §2157.001, Texas Government Code. All products and services offered to Customers under this Contract are listed in Manufacturer's catalogue on file with the Texas Building and Procurement Commission.

11. QUOTATIONS, WARRANTY, AND RETURN POLICIES. Manufacturer will adhere to their then-currently published policies concerning quotations, warranties, and return policies. Warranty and return policies for Customers will not be more restrictive or more costly than those warranty and return policies maintained by Manufacturer for other similarly situated Customers for like products or services.

12. INVALID TERM OR CONDITION. If any term or condition of this Contract shall be held invalid or

unenforceable, the remainder of this Contract shall not be affected and shall be valid and enforceable.

13. ENFORCEMENT OF CONTRACT AND DISPUTE RESOLUTION. Manufacturer and DIR agree to the following (i) a party's failure to require strict performance of any provision of this Contract shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision; (ii) applicable to State agency purchases only, for disputes not resolved in the normal course of business, the disputer resolution process provided for in Chapter 2260, Texas Government Code, shall be used; (iii) the laws of the State of Texas shall govern this Contract; (iv) actions or proceedings arising from this Contract shall be heard in a court of competent jurisdiction in Travis County, Texas; and (v) nothing herein shall be construed to waive the State's sovereign immunity.

14. ENTIRETIES. The Contract supercedes all prior agreements, representations or promises, whether oral or written, made by the parties regarding the subject matter of this Contract.

15. MODIFICATION OF CONTRACT TERMS AND/OR AMENDMENTS. The terms and conditions set forth in the Contract shall govern all transactions by Customers under this Contract. The Contract may only be modified or amended upon mutual agreement of DIR and Manufacturer. Additional Customer terms and conditions, which do not conflict with the contract, may be added by a Purchase Order and given effect. For individual Purchase Orders, however, the Manufacturer may offer Customers more advantageous pricing and/or payment options than those set forth in the Contract. In such event, Manufacturer shall furnish a copy of such better offerings to DIR upon request.

16. DIR LOGO. Manufacturer may use the DIR logo in the promotion of this Contract to Customers with the following stipulations; (i) the logo may not be modified in any way; (ii) when displayed, the size of the DIR logo must be equal to or smaller than the Manufacturer; (iii) the DIR logo is only used to communicate the availability of products and services under this Contract to Customers; and (iv) any other use of the DIR logo requires prior written permission from DIR.

17. MANUFACTURER LOGO. DIR may use the Manufacturer's name and logo in the promotion of this Contract to communicate the availability of Products under this Contract to Customers. Use of the logo may be on the DIR Web Site or on printed materials. Any use of Manufacturer's Logo by DIR must comply with and be solely related to the purposes of this Contract and any usage guidelines communicated to DIR from time to time. Nothing contained in this Contract will give DIR any right, title, or interest in or to Manufacturer's trademarks or the goodwill associated therewith, except for the limited usage rights expressly provided by Manufacturer.

18. LEASING PROVISION. The parties to this Contract may agree to provisions that allow leasing of Information Resources Technologies in addition to purchase sales.

19. SITE PREPARATION. Customer(s) shall prepare and maintain its site in accordance with written instructions furnished by Manufacturer prior to the scheduled delivery date of any product or service and shall bear the costs associated with the site preparation.

20. TRAINING AND TRADE SHOW PARTICIPATION. Manufacturer may be required to provide product overview training to DIR at no cost. The training will be held within the Austin, Texas area at times mutually acceptable to DIR and Manufacturer.

Manufacturer understands and agrees that it must participate by providing a staffed booth display or similar presence at no less than two (2) trade shows or similar functions sponsored by DIR each calendar year at the Manufacturer's expense. Manufacturer must display the DIR logo at all trade shows that potential Customers will attend. DIR reserves the right to approve or disapprove of the location of the use of the DIR logo in or on the Manufacturer's booth.

21. ORIENTATION MEETING. Upon 60 days from execution of the Contract, DIR may require the Manufacturer to attend an orientation meting to discuss the Contract content and procedures. The meeting will be held within the Austin, Texas area at a date and time mutually acceptable to DIR and the Manufacturer. DIR shall bear no cost in the time and travel of the Manufacturer for attendance at the meeting.

22. USE OF SUBCONTRACTORS. Manufacturer may subcontract installation, training, warranty, or maintenance services. However, Manufacturer shall remain solely responsible for the performance of its obligations under this Contract. If Manufacturer uses any subcontractors, Manufacturer shall satisfy DIR that it has complied and maintains compliance with the DIR HUB Subcontracting Plan.

23. FORCE MAJEURE. DIR, Customer, or Manufacturer may be excused from performance under this contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party experiencing the event of Force Majeure has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance and to shorten the duration of the event of Force Majeure. The party suffering an event of Force Majeure shall provide notice of the event to the other parties immediately. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, a Customer may terminate a Purchase Order if it is determined by the Customer that Manufacturer will not be able to deliver product or services in a timely manner to meet the business needs of the Customer.

24. TERMINATION FOR NON-APPROPRIATION.
Customer may terminate Purchase Orders and DIR may terminate this Contract if funds sufficient to pay obligations hereunder are not appropriated by the legislative body on behalf of local governments, or by the Texas legislature on behalf of state agencies. In the event of non-appropriation, Manufacturer will be provided ten (10) days written notice of intent to terminate.

25. TERMINATION FOR CONVENIENCE. Either party may terminate this Contract, in whole or in part, by giving the other party thirty- (30) days written notice. A Customer may terminate a Purchase Order if it is determined by the Customer that Manufacturer will not be able to deliver product or services in a timely manner to meet the business needs of the Customer.

26. TERMINATION FOR CAUSE. Either DIR or Manufacturer may issue a written notice of default to the other upon the occurrence of a material breach of any covenant, warranty or provision of this Contract or a Purchase Order arising hereunder. The non-defaulting party shall give the defaulting party thirty- (30) days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate this Contract. Customers hereunder have no power to terminate this Contract for default. Customer's rights are exclusively based on their Purchase Order.

27. CUSTOMER RIGHTS UNDER TERMINATION.
In the event this Contract expires or is terminated for any reason, a Customer shall retain its rights under the Purchase Order issued with respect to all products or services ordered and accepted prior to the effective termination date.

28. MANUFACTURER RIGHTS UNDER TERMINATION. In the event this Contract expires or is terminated for any reason, a Customer shall pay all amounts due for products or services ordered prior to the effective termination date and ultimately accepted.

29. SURVIVAL. All warranty and/or service agreements that were entered into between Manufacturer and a Customer under the terms and conditions of this Contract shall survive the termination of this Contract.

30. HANDLING OF WRITTEN COMPLAINTS. In addition to other remedies contained in this Contract, a person contracting with DIR may direct their written complaints to the following office:

> Public Information Office
> Department of Information Resources
> Attn: Matt Kelly
> 300 W. 15th Street, Suite 1300
> Austin, TX 78701
> (512) 936-6550, voice
> (512) 475-4759, fax
> Email: matt.kelly@dir.state.tx.us

BIND\VIEW.

Master License Agreement (93.3267)

TABLE 1: SELECTED BUSINESS TERMS			
Licensee legal name:			
State of incorporation			
Initial address for notice:			

1. Introduction

1.1. Parties. This Master License Agreement ("Agreement") is made by and between **BindView Corporation** (a registered assumed name of BindView Development Corporation), a Texas corporation whose initial address for notice is 5151 San Felipe, Houston, Texas 77056, attention: General Counsel ("BindView" or "we" or "us"); and the entity identified in Table 1 above ("Licensee" or "you").

1.2. Schedules. (a) This Agreement is a master agreement that in itself does not license any specific software to you, but instead provides a framework for licenses to be granted by one or more Schedules, as defined in the next sentence. As used in this Agreement, "Schedule" means a document that *(1)* identifies specific Software to be licensed under this Agreement; and *(2)* recites that it is entered into pursuant to this Agreement or that the Software is licensed pursuant to this Agreement, or words to similar effect. **(b)** A Schedule may take the form of a "sales quotation" that we provide to you; in such event, you may confirm your agreement to such a Schedule either *(1)* by executing it and returning it to us, by FAX or otherwise, or *(2)* by providing us with a purchase order that contains a matching description of *(i)* the Software, *(ii)* the License, *(iii)* maintenance if any, *(iv)* professional services and/or training if any, and *(v)* pricing for the foregoing. **(c)** Each Schedule will be deemed to be an addendum to this Agreement that, together with this Agreement, constitutes a contract separate from each other Schedule unless otherwise stated therein. **(d)** If a Schedule contains terms and conditions at variance from this Agreement, the terms and conditions in the Schedule shall control.

1.3. Definitions. The terms below are defined as follows; other terms may be defined in the specific provisions in which they occur.

Affiliate, as to a corporation or other entity, means *(a)* any entity expressly so identified in this Agreement or in a Schedule, if any; and *(b)* any person, partnership, joint venture, corporation or other form of enterprise, domestic or foreign, that directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with such entity. As used in this paragraph, "controlled" or "con-

trol" means *(1)* ownership, directly or indirectly, of fifty percent (50%) or more of the voting securities of such party, or *(2)* the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting stock, by contract, or otherwise.

Counting Utility software means utility software provided by us for counting the number of one or more categories of License Unit in your network. If not provided by us as part of the Software, the Counting Utility software shall be subject to the same warranties and remedies as though it had been provided as part of the Software.

CPI means the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, 1982-84=100.

Delivery Date, as to an item of Software licensed to you under an applicable Schedule, means the date (or if on multiple dates, the latest date) on which we and/or our authorized distributor or reseller sends you, by established air express courier or electronic transmission, and/or by FAX in the case of license codes, the first version of such item of Software that is so licensed to you and the license code(s) for the License granted to you.

Documentation means the user documentation that we provide with the Software, including any instructions for installing patches or upgrades.

License means a license to use particular Software in respect of a particular number of License Units. Your right to use the Software in respect of a License Unit may sometimes be referred to informally as a "license," e.g., the term "1,000 user-account licenses" means the right to use the Software for 1,000 distinct user accounts.

License Unit means each distinct unit for which particular Software is licensed – for example, each distinct user account, server machine, employee, etc., as applicable to such Software – as defined in Appendix A.

Maintenance or maintenance subscription or maintenance support means the right, as to particular Software and for a defined period of time specified in this Agreement (one year unless expressly agreed otherwise in writing), to receive upgrades and support in accordance with Section 4.

Managing – see Appendix A.

Price Protection Period – see Section 4.6.

Schedule – see Section 1.2.

Server machine or workstation machine (in upper or lower case) includes each distinct instance of an operating system run on a particular machine. Software refers to the specific computer program(s) for which you are licensed as set forth in this Agreement, together with all modifications, enhancements, upgrades, patches, and fixes that we may provide to you pursuant to this Agreement. References to "Software" shall be deemed to refer to each such computer program individually, independent of any other such computer program.

Specifications means *(a)* the Documentation, and *(b)* any additional specifications for the Software's performance that are expressly set forth and identified as such in a Schedule that is manually signed in hard-copy by an officer of BindView.

Table 1 means the table so labeled at the beginning of this Agreement.

Upgrades – see Section 4.2.

Warranty Period – see Section 3.2.

2. License Grant

2.1. Software Delivery; Acceptance. (a) To the extent that we have not already done so at the time in question, upon the parties' agreement to a Schedule (or at such time as may be specified therein) we will promptly deliver to you a copy of the Software, its Documentation, and a license code corresponding to the type of License granted by the Schedule. **(b)** We offer our customers a significant pre-license trial period. Accordingly, unless the applicable Schedule expressly provides otherwise, you will be deemed to have accepted the Software when the parties agree to the Schedule, without a post-license acceptance period.

2.2. License Grant. (a) Each Schedule grants you a non-exclusive, worldwide (subject to applicable export-control and similar laws; see Section 9.3), perpetual License, transferable in accordance with this Agreement, at no charge other than as set forth in the Schedule, to use the executable form of the Software described therein in accordance with the terms and conditions of this Agreement and of such Schedule. **(b)** If a Schedule refers to multiple items of Software as being licensed, you will be deemed to have been granted a separate, independent License for each item. **(c)** You may use the Software, solely in accordance with this Agreement and the applicable Schedule, for your internal business use only (excluding, by way of example but not limitation, service-bureau or application-service-provider use), which use may change from time to time, except to the extent that this Agreement or an applicable Schedule expressly provides for other use. **(d)** You may *(1)* make a reasonable number of copies of the Software for backup and disaster-recovery purposes, and *(2)* use the Software for reasonable testing and operations for disaster-recovery purposes.

2.3. License-Unit Requirements. (a) Unless otherwise provided in this Agreement or in an applicable Schedule, you must be licensed for each distinct License Unit in connection with which you use the Software. Except as expressly provided otherwise in this Agreement, you may not use the Software in connection with more, in the aggregate, than the number of distinct corresponding License Units for such Software for which you are licensed. **(b)** If you permanently replace one License Unit in your network with another one, then you may use the Software in con-

nection with the replacement License Unit in lieu of the replaced one. The previous sentence does not apply to migration Software. **(c)** If you are provided with a new or different version of the Software, that will not in itself increase the number of License Units for which you are licensed even if the new or different version has a different license code; you may not use both the new or different version and another version if such use would exceed the use permitted by the License. **(d)** If we have reason to believe that you are not in compliance with this Agreement, then upon our request by at least 10 business days' notice to you, then you will provide us with information about your installation and use of the Software sufficient to confirm compliance, including without limitation running the Counting Utility software to count the number of License Units in your network and providing us with electronic and/or hard copies of the resulting report(s). **(e)** This clause (e) addresses the hypothetical situation in which *(i)* you use the Software in connection with more License Units than the number for which you are licensed, or *(ii)* you use the Software in some other manner for which you are not licensed but for which we make licenses generally available. If either such situation arises, the parties prefer to resolve the situation as a business matter and not as a matter of possible copyright infringement by you. Accordingly, if you voluntarily report to us that you have made such use of the Software, then, AS OUR EXCLUSIVE REMEDY: *(1)* you will acquire the required licenses, plus one year of back maintenance for the newly licensed License Units; and *(2)* if, at the time you make such report to us, you are a maintenance subscriber for the Software, then you will also acquire future maintenance for such newly licensed License Units for a period expiring at the same time as your then-current maintenance subscription for the Software.

2.4. Retained Rights; Certain Prohibited Practices. The Software is licensed, not sold; we or our supplier(s) retain all rights not granted by this Agreement. Without limiting the previous sentence: **(a)** You may not permit or assist others to use the Software in a manner for which they are not licensed. **(b)** Except as expressly provided otherwise by this Agreement, you may not rent, lease, sell, sublicense, assign, or otherwise transfer or provide the Software or Documentation to others. The Software remains the confidential property of BindView or its suppliers; you agree to use reasonable measures to preserve it in confidence, including at least the same degree of protection that you give to your own comparable confidential information. **(c)** Except as expressly permitted by applicable law, you may not decompile, disassemble, or reverse engineer the Software or any part of it in any manner, nor knowingly permit or assist anyone else to do so. If applicable law permits you to engage in such activities notwithstanding this Agreement, you will provide us with advance notice and reasonably detailed information concerning your intentions.

2.5. Internal Distribution of Software Documentation. You may make and internally distribute copies of the Documentation for such Software, or of portions thereof, for the sole purpose of supporting your use of such Software as permitted by this Agreement and the applicable Schedule. You will ensure that all BindView proprietary legends in the Documentation are included in any such copies.

2.6. Affiliate-Related Use of Software. (a) You may use the Software for the benefit of your Affiliates in the same manner as for your own

benefit under this Agreement. In addition, any of your Affiliates may use the Software in the same manner as you under this Agreement. In either case, such use by, or for, a particular Affiliate may continue only for long as it remains an Affiliate and for a transition period of up to one (1) year thereafter. **(b)** Upon our request from time to time (but no more than once per year in the absence of good cause), you will provide us with a list of all Affiliates that are using the Software pursuant to this Section 2.6, and all Affiliates for whose benefit the Software is being used pursuant to this Agreement, and their respective numbers of License Units. **(c)** Any such use by or for an Affiliate *(1)* shall be deemed your use for purposes of determining whether you are in compliance with this Agreement, and *(2)* will be at no additional charge other than charges you would have to pay under this Agreement if such use were your own use (e.g., additional license- and/or maintenance fees if any). **(d)** Any such Affiliate using the Software will be deemed to have agreed to comply with this Agreement. You will notify such Affiliate of the same and will be responsible for any noncompliance by it.

2.7. Contractor Use of Software. (a) Your contractors may use the Software, solely on your behalf, in the same manner as you under this Agreement. If any such use by a contractor (other than individual contractors who work primarily for you) is more than occasional (e.g., if such use is by an outsourcing contractor), you will promptly notify us of the identity of the contractor(s). **(b)** Upon our request from time to time (but no more than once per year in the absence of good cause), you will provide us with a list of all contractors that are using the Software pursuant to this Section 2.7. **(c)** Any such use by any such contractor *(1)* shall be deemed your use for purposes of determining whether you are in compliance with this Agreement, and *(2)* will be at no additional charge other than charges you would have to pay under this Agreement if such use were your own use (e.g., additional license- and/or maintenance fees if any). **(d)** Any such contractor using the Software will be deemed to have agreed to comply with this Agreement. You will notify such contractor of the same and will be responsible for any noncompliance by it.

3. Limited Warranties; Remedies

3.1. Media Warranty. We warrant to you, for 90 days after the Delivery Date, that any media that we provide on which the Software is delivered (if any) will be free from defects. YOUR EXCLUSIVE REMEDY for any breach of such warranty will be for us to replace the defective media without charge. Outside the above warranty period, we will replace defective media at a nominal charge.

3.2. Performance Warranty. (a) We warrant to you, for 90 days after the Delivery Date of the Software ("Warranty Period") except as otherwise provided below, that the Software, when used in accordance with the Specifications: *(1)* will perform, in all material respects, in accordance with such Specifications; *(2)* will correctly process date data for dates before and after January 1, 2000, including but not limited to leap-year recognition; *(3)* to the best of our knowledge after reasonable preventive efforts, will not contain any virus, Trojan horse, or worm, or other software designed to permit unauthorized access to, or to erase or otherwise harm, your software, hardware, or data; and *(4)* will not contain any undisclosed "time bomb," "back door," or other mechanism de-

signed to give us the ability to prevent you from using the Software in the manner authorized by the applicable Schedule; the Warranty Period for the warranty in this clause (4) will be as long as you use the Software. **(b)** If, during the Warranty Period, you give us notice of a failure by the Software to comply with any of the warranties in subparagraph (a), then the following provisions will apply. *(1)* We will provide you with a correction or workaround for such failure within a reasonable period of time, not to exceed 30 days without your approval. You agree to provide us with such information about the failure as we reasonably request. Upon your written request, we will reimburse you for the reasonable cost of providing us with such information. *(2)* If for any reason we do not provide you with a correction or workaround in accordance with clause (1), then upon your written request we will refund all initial license fees paid for the License, plus all maintenance fees paid in connection with your purchase of the License, and this Agreement will be terminated as to the License. Unless we agree otherwise in writing, you must make any such refund request by notice to us no later than the latest of *(i)* the end of the Warranty Period, *(ii)* 30 days after your notice to us of the Software failure in question, or *(iii)* if you and we agreed that we should be given additional time to attempt to provide you with a correction or workaround, then you must make such refund request no later than 10 days after such additional time expires. Otherwise, you will be deemed to have waived your right to a refund. **(c)** Our obligations in subparagraph (b) are your EXCLUSIVE REMEDIES for any breach of any of the warranties in subparagraph (a).

3.3. Infringement Warranty. (a) We warrant to you that *(1)* we own the Software or are otherwise authorized to grant the License, and *(2)* the Software, its use in accordance with the Specifications, and the Documentation, will not in and of themselves infringe any valid patent right, copyright, trade secret right, or similar intellectual property right of any third party, except that we do not make this warranty in respect of any such right owned or assertable by you or any of your affiliates. YOUR EXCLUSIVE REMEDY for any breach of such warranty shall be to invoke the infringement-indemnity provisions of this Section 3.3. **(b)** *(1)* IF a third party (other than your affiliate) claims that the Software per se, or the use of the Software per se as instructed by the Specifications, infringes the third party's patent rights, copyright, trade secret rights, or other proprietary right, THEN, subject to clause (2) below, we will defend you against the claim, at our expense, and indemnify you against any resulting court costs and awards (including damage awards and attorneys' fee awards), if any. *(2)* To be eligible for the defense- and indemnity of clause (1), you must *(i)* promptly notify us of the claim, *(ii)* not make any admissions in respect of the claim, *(iii)* not settle the claim without our consent, and *(iv)* cooperate with us in the defense; we will reimburse you for reasonable out-of-pocket expenses incurred in such cooperation. At your option, you may engage separate counsel, at your own non-reimbursable expense, to monitor the defense; if you advise us that you have done so, we will instruct our counsel to provide all reasonable cooperation with your counsel for that purpose. **(c)** IF *(1)* we defend you as provided in subparagraph (b), but a court of competent jurisdiction nevertheless enjoins you from using the Software as a result of the claim, and we are unable to have the injunction stayed or overturned, or *(2)* we settle the claim on terms that would require you to stop using the Software, or *(3)* we reasonably determine that you should stop using

the Software because of the claim, THEN we will, at our option and expense, *(x)* modify or replace the Software with non-infringing software which performs, in all material respects, the same functions as the replaced Software; or *(y)* procure for you the right to continue using the Software at our expense; or *(z)* if in our judgment neither (x) or (y) is commercially feasible, direct you to stop using the Software and refund a prorated amount of the initial license fee that you paid for the License (prorated monthly, as of the date we direct you to stop using the Software, over a period of 60 months, beginning with the Delivery Date) along with any unused maintenance fee you paid for the then-current maintenance period. We will not be responsible for any infringing use that you may make of the Software after we direct you to stop using the Software. **(d)** Our obligations under subparagraphs (b) and (c) are YOUR EXCLUSIVE REMEDIES for any alleged or actual infringement by the Software or by your use of it.

3.4. Disclaimer of Other Warranties. (a) WE DO NOT WARRANT OR REPRESENT that the Software will be free of errors or defects, will meet your needs, or will operate without interruption. Nor do we warrant that the Software will perform as documented in cases of hardware malfunction, misuse of the Software, or use of the Software with other software not described in the Specifications (unless we direct you to use the Software with such other software, in a writing that expressly states that the warranties of this Agreement shall apply to such use). Moreover, except to the extent (if any) explicitly stated otherwise in this Agreement, THE SOFTWARE IS NOT DESIGNED OR INTENDED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, including without limitation any application in which the failure of the Software could lead directly to death, personal injury, or severe physical or property damage. **(b)** THE EXPRESS WARRANTIES IN THIS AGREEMENT ARE YOUR EXCLUSIVE WARRANTIES. On behalf of ourselves and our suppliers, to the maximum extent permitted by law, WE DISCLAIM ANY AND ALL WARRANTIES, DUTIES, CONDITIONS, OR REPRESENTATIONS THAT ARE NOT EXPRESSLY SET FORTH IN THIS AGREEMENT, with respect to the Software or any part thereof or the use thereof. This disclaimer extends, but is not limited, to any and all implied warranties (and any implied duties, conditions, terms, or representations) of title, non-infringement, non-interference, quiet enjoyment, merchantability, fitness or suitability for any purpose (whether or not we or any of our suppliers know, have reason to know, have been advised, or are otherwise in fact aware of any such purpose), results, effort, accuracy, or quality, whether alleged to arise by law, by reason of custom or usage in the trade, or by course of dealing. **(c)** WE DISCLAIM, for ourselves and our suppliers, any warranty, duty, condition, or representation to any person other than you with respect to the Software or any part thereof. **(d)** We are acting on behalf of our suppliers for the purpose of disclaiming, excluding and/or limiting obligations, warranties, and remedies as provided in this Agreement, but in no other respects and for no other purpose.

4. Maintenance Subscriptions

4.1. Applicability. If and while you are a maintenance subscriber as to the Software, you are entitled to the following rights at no additional

charge other than the agreed maintenance fees; any other maintenance rights must be expressly agreed to in writing by us.

4.2. Upgrades. We will provide you with all new releases, revisions, modifications, enhancements, patches, and fixes of the Software (collectively, "Upgrades") that we, in our sole discretion, release for general licensing availability.

4.3. General Telephone Assistance. We will make general technical assistance concerning the Software available to you via telephone during our regular technical-support hours as posted on our Web site from time to time.

4.4. Product Support. If you give us notice of a repeatable error or malfunction in the Software, we will work with you in accordance with Section 4.3 to attempt to diagnose its cause. If the cause appears to be a material failure by the Software to perform substantially in accordance with its Documentation, then we will provide you with a correction or workaround for such failure within 30 days, or such longer period as we may mutually agree, in accordance with our then-standard support policies, available at our Web site.

4.5. Remedy. (a) If for any reason we do not provide you with a correction or workaround for a failure in accordance with Section 4.4, or if we otherwise breach our maintenance obligations under this Agreement, then: *(1)* Upon your written request, we will terminate your maintenance subscription for the Software and refund the unused portion of your maintenance fee for the then-current maintenance period; *(2)* the unused portion will be computed by pro-rating such maintenance fee, on a monthly basis, as of the date on which you gave us notice of the material failure; and *(3)* unless we agree otherwise in writing, you must make any such request for termination by notice to us no later than 60 days after your notice to us of the Software failure or of the other breach of our maintenance obligations under this Agreement,, otherwise you will be deemed to have waived your right to a refund in respect thereof. **(b)** Our obligations in subparagraph (a) are your EXCLUSIVE REMEDIES for any breach by us of our maintenance obligations under this Agreement. They also are your EXCLUSIVE REMEDIES for any error or malfunction by the Software that occurs while you are a maintenance subscriber, except that, if the Warranty Period is still in effect at the time in question, then you will be entitled to all remedies available to you under Section 3 (subject to all remedy-limitation provisions of this Agreement).

4.6. Maintenance-Renewal Price Protection. (a) The provisions of subparagraph (b) will apply during a "Price Protection Period" ending three years after the effective date of an applicable Schedule, provided and on condition that you meet the eligibility requirements of subparagraph (c). Such eligibility requirements do not require you to renew your maintenance for any item of Software; any such renewal will be at your option unless otherwise agreed in writing by the parties. **(b)** *(1)* During the Price Protection Period, and subject to clause (2), your per-year maintenance-fee pricing for renewals of maintenance for the Software licensed under such Schedule for any one-year renewal period will be 20% of your total discounted license fee for such item of Software (or such lower percentage for multi-year renewals as may be agreed in writing by the parties). *(2)* We may in our discretion (including without limitation during the Price Protection Period) increase your per-year maintenance-fee

pricing, no more than once per year, by no more than the greater of *(i)* five percent (5%) for each year of the previous such maintenance period, or *(ii)* the aggregate percentage increase in CPI during the previous such maintenance period. We will not, however, increase such pricing for any period for which you previously paid the maintenance fee. *(3)* During the Price Protection Period, your per-year maintenance-fee pricing, for an item of Software licensed under an applicable Schedule, will not exceed our then-current, per-year list price of maintenance for such item, for a maintenance period of the same duration as the initial maintenance period set forth in such Schedule. **(c)** To be eligible for the maintenance-renewal pricing set forth in subparagraph (b), you must: *(1)* not allow your maintenance subscription for the applicable item(s) of Software to expire, and *(2)* if we so request, no more than once per year in the absence of good cause, provide us with a report, generated using the Counting Utility software where applicable, that shows the number of servers, user accounts, and/or other License Unit applicable to the item(s) of Software that are on maintenance, in all networks where the Software is licensed for your use. Such report must be generated no more than 30 days prior to the date on which you provide us with the report. Such report must include hard- and electronic copies of any output generated by such utility software. **(d)** If you cease to be eligible under subparagraph (c) as to any item of Software, then any reinstatement of maintenance for such item, if any, will be on such terms as the parties may mutually agree.

4.7. Discontinuance or Suspension of Maintenance. Unless expressly agreed otherwise in writing by the parties: **(a)** We reserve the right to discontinue maintenance support for superseded versions of the Software at any time 12 months after the date on which we make a superseding version generally available for licensing; see subparagraph (d) concerning continued support after such discontinuance. **(b)** If we cease to make the Software generally available for licensing, then at any time beginning 12 months thereafter, we may discontinue maintenance support for the Software. If we do so, then *(1)* we will give you at least three months' prior written notice before discontinuing your maintenance support for the Software, and *(2)* if your then-current maintenance period for the Software has not expired as of the time we discontinue your maintenance support, then at your written request, we will refund the unused amount of your maintenance fee for the discontinued Software for the then-current maintenance period, pro-rated on a monthly basis as of the effective date that we discontinue your maintenance support. See subparagraph (d) concerning continued support after such discontinuance. **(c)** If you so request, no more than once per year in the absence of good cause, we will provide you a list of the versions of the Software that are available for licensing and eligible for maintenance support. **(d)** If we discontinue maintenance support for an item or version of Software, then where practicable, and subject to factors such as availability of BindView personnel who are appropriately knowledgeable, upon your request we will attempt to provide maintenance support for such item or version on an as-needed basis, but we cannot assure you that we will be able to do so. We reserve the right to charge an additional fee for such support.

4.8. Maintenance Renewal. Except as otherwise provided in this Section, your maintenance subscription will automatically terminate upon its expiration date

4.9. License Continues After Maintenance Expiration. Unless otherwise specified in this Agreement, you will continue to be licensed to use the Software under the License even if you allow your maintenance subscription to expire.

5. Training and Professional Services

5.1. Rates; Location; Timing. (a) Any daily or hourly rates for our training and/or professional services set forth in a Schedule are valid for the particular training and/or professional services specified therein. Rates for other training and/or professional services, if any, will be as mutually agreed. **(b)** If a Schedule does not specify a location for training and/or professional services, then unless the parties otherwise agree, the location will be – at your option – *(1)* at a facility of yours located in the United States, selected by you in consultation with BindView, or *(2)* at our Houston office, or *(3)* if we in our discretion make regional training available, at a regional training site. Unless otherwise specified in the applicable Schedule, all training and/or professional services at your site, if any, will occur in a single trip to the site. **(c)** The specific timing of any such training and/or professional services will be as you reasonably determine, in consultation with us to ensure availability of our personnel. Unless the applicable Schedule provides otherwise, you must use all training and/or professional services time set forth in this Agreement within 90 days after the effective date of the Schedule.

5.2. Training Certificates. If specified in the applicable Schedule, we will provide you, at no additional charge, with the number of training certificates so specified. Except as may be otherwise specified in the Schedule, each certificate will be valid for attendance by one of your employees for one day of training at our Houston headquarters site within 90 days after the effective date of this Agreement. If so stated in the Schedule, each certificate may alternatively be surrendered for a credit toward BindView's training fees for additional training at your site.

5.3. Warranty for Training and/or Professional Services. (a) We warrant that *(1)* all personnel who provide you with training and/or professional services on our behalf under this Agreement will be qualified and trained for such duties; *(2)* all professional services and/or training provided to you on our behalf under this Agreement will be performed with reasonable care and skill. The foregoing warranties do not cover alleged errors or malfunctions by the Software, which are addressed in any applicable warranty- and remedy clauses of this Agreement. **(b)** If we materially breach the foregoing warranties and do not correct it within 10 business days after your notice of breach, then YOUR EXCLUSIVE REMEDY will be for us to refund all fees and expense reimbursements that you paid in respect of the professional services and/or training as to which the breach occurred. Any request for such a refund must be made within 90 days after the end of the agreed-upon training time or professional services time as applicable.

5.4. BindView Travel Expenses; Other Costs. (a) You will reimburse us for reasonable travel and living expenses incurred by our personnel in connection with any on-site training and/or professional services that we provide under this Agreement with your advance approval. **(b)** All requests for expense reimbursement that we submit to you will include supporting receipts. If you so direct us in writing, we will submit all such

requests within 30 days after completion of the project in which we incur the expenses. **(c)** We will be responsible for all salary, benefits (if any), and insurance of our personnel in connection with any such training or professional services. **(d)** You will be responsible for all salary and benefits (if any), insurance, and expenses (including travel and living expenses if applicable) of your personnel in connection with any such training or professional services.

5.5. Site Rules. During any time in which a party's personnel are present at the other party's site, such personnel will abide by all reasonable safety and/or security rules of which the other party advises them in advance, provided such rules do not require drug, alcohol, or psychological testing or random security searches. Each party agrees to provide the other party with written copies of all such rules upon request. Upon your advance written request and at your expense, we will arrange to have background checks performed on any of our personnel who provide services at your site.

5.6. Insurance. (a) During any time in which we provide training or professional services at your site, we will maintain, at our expense, the following types of insurance: *(1) Worker's compensation:* Statutory limits. If we are self-insured, we will provide you with a copy of a current self-insured certificate upon your written request. *(2) Employer's liability:* Limits of not less than $500,000 per occurrence. *(3)* Commercial general liability ("CGL"): Limits of not less than $1,000,000 combined single limit. *(4) Business auto liability:* Limits of not less than $1,000,000 per occurrence. *(5) Errors & omissions / professional liability:* Limits of not less than $5,000,000. **(b)** During any time in which we are obligated by this Section to maintain insurance coverage, upon your written request, we will provide you with a certificate of insurance evidencing that such coverage is in effect.

6. Payment Terms; Taxes

6.1. Payment Terms. All payments will be in accordance with the Texas Prompt Payment Act.

6.2. Taxes. All Customers hereunder are tax exempt entities under 151.309, Texas Tax Code. All entities are also exempt from federal excise tax, Vendor shall not bill for inapplicable taxes.

7. Remedy Limitations

7.1. Applicability. Each of the remedy limitations set out in this Section 7 and elsewhere in this Agreement is to be enforced to the maximum extent permitted by applicable law, independently of any other applicable remedy limitation, even if any particular remedy is held to have failed of its essential purpose, and also independently of the warranty-disclaimer provisions of this Agreement. You acknowledge that otherwise we would not have granted the License on the economic terms stated in the Schedule.

7.2. Remedy Exclusions. Except as provided in Section 7.4, the following remedy exclusions will apply to the greatest extent permitted by law: NEITHER PARTY NOR ITS SUBSIDIARIES, PARENT COMPANY, OR AFFILIATES, IF ANY, WILL BE LIABLE TO THE OTHER IN CONTRACT, TORT (including without limitation negligence), OR ANY OTHER FORM OF ACTION FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY, OR SIMILAR DAMAGES, including, as examples but not limitations, damages for lost profits or other economic loss, or loss of privacy, arising from the use of, the results of the use of, or the inability to use the Software by authority of the License.

7.3. Dollar Cap. Except as provided in Section 7.4, the following limitation ("dollar cap") will apply to the greatest extent permitted by law: THE MAXIMUM AGGREGATE LIABILITY OF EITHER PARTY and its suppliers, subsidiaries, parent company, or affiliates, if any, to the other party and all persons claiming rights through the other party (including without limitation any affiliate or other entity having rights under this Agreement), in respect of any and all claims arising from or related to this Agreement, in contract, tort, or otherwise, will be the sum of *(1)* the initial license fee for the License, plus *(2)* the aggregate of the maintenance fees that you paid, if any, in the five (5) years preceding the final determination of such liability.

7.4. Carve-Outs from Remedy Limitations. The remedy exclusions and/or dollar-cap limitation of Sections 7.2 and 7.3 will apply only as set forth in the table to the categories listed in the table (see also the notes following):

CATEGORY	SUBJECT TO REMEDY EXCLUSIONS?	SUBJECT TO DOLLAR CAP?
Money you owe for license fees, maintenance fees, or service fees hereunder	Yes	No
Our infringement-indemnity obligations under Section 3.3(b) and (c)	Yes	No
A party's breach of an obligation of confidentiality	No	No
Intentional infringement by a party of the other party's intellectual property rights	No	No
Direct damages arising from bodily injury	No	No
Direct damages arising from physical injury to tangible personal property *[Note 1]*	No *[Note 2]*	No *[Note 2]*

Note 1: To be exempt from the remedy exclusions and dollar cap of Sections 7.2 and 7.3, such direct damages must be shown to have been caused by the negligence, gross negligence, or willful misconduct of a party or its personnel.

Note 2: The remedy limitations and dollar cap of Sections 7.2 and 7.3 <u>do</u> apply to the extent that the tangible personal property in question is an information-storage medium and the injury is to stored information (including without limitation computer programs) without other damage to such medium.

7.5. Sovereign Immunity. Nothing herein shall be construed to waive the sovereign immunity of the State of Texas.

8. Termination

8.1. Definition. The phrase "termination of this Agreement," "termination of a Schedule," and similar phrases, refers to termination *(i)* of a License and with it your right to use the Software in question, *(ii)* if you are then a maintenance subscriber, of your maintenance subscription for such Software and with it your rights as a maintenance subscriber, and *(iii)* of your obligation to make any further payments of license fees and/or unearned maintenance fees under this Agreement. All other provisions of this Agreement will survive any termination of this Agreement.

8.2. Termination by BindView. We will not terminate this Agreement or a Schedule except for your failure to timely pay a license fee required by such Schedule where such failure continues for 30 days after notice of non-payment.

8.3. Your Right to Terminate. You may terminate this Agreement and/or any Schedule and/or your maintenance subscription at any time, with or without cause, by written notice to us. If you do so, you may obtain a refund of your license fee and/or maintenance fee only to the extent provided in the warranty- and maintenance provisions of this Agreement.

8.4. Effect of Termination. (a) If this Agreement or a Schedule is terminated for any reason, then, subject to subparagraph (b), you will promptly *(1)* stop using the Software in question, and *(2)* destroy all copies of such Software in your possession or control (backup copies of such Software may be deleted in accordance with your normal procedures for periodic re-use of backup media). **(b)** Termination of this Agreement or a Schedule by either party in connection with a breach of this Agreement by the other party shall be without prejudice to any other rights or remedies available under this Agreement in respect of such breach.

9. Other Provisions

9.1. Trademark Use Restrictions. Neither party will use the name or any trademark of the other party in advertising, press releases, or any other form of written publicity without obtaining the other party's prior written consent.

9.2. Governing Law. Unless otherwise stated in this Agreement, all disputes arising out of or relating to this Agreement or its interpretation, validity, or enforceability will be governed by the laws of the United States of America and of the State of Texas as applicable to contracts made and performed entirely in Texas by residents thereof. The parties exclude application of the United Nations Convention on Contracts for the International Sale of Goods.

9.3. Export Controls. You agree that you will not transfer the Software or Documentation, or any other software or documentation provided by BindView, except in compliance with U.S. export-control regulations or other applicable law. If we so request, you will provide us with written assurances and other export-related documents as may be required to comply with the same.

9.4. U.S. Government. The Software and its accompanying documentation are "commercial computer software" and "commercial computer software documentation," respectively, pursuant to the applicable provisions of the FARs (e.g., 47 CFR 12.211 and/or 12.212) and DFARS (e.g., 48 CFR 252.227-7015 and/or 227.7202). Any use, modification, reproduction, release, performance, display or disclosure of the Software and accompanying Documentation by the United States Government shall be governed solely by, and is prohibited except to the extent expressly permitted by, the terms of this Agreement. The Manufacturer / Contractor is BindView Development Corporation, 5151 San Felipe, 25th Floor, Houston, Texas 77056.

9.5. Savings Clause. If any provision of this Agreement is held to be invalid, void, unenforceable, or otherwise defective by a court or other tribunal of competent jurisdiction, then *(i)* all other provisions will remain enforceable, and *(ii)* such provision will be deemed modified to the minimum extent necessary to cure the defect.

9.6. Attorneys' Fees. If either party brings an action in respect of any dispute arising out of or relating to this Agreement or its interpretation, validity, enforceability, or subject matter, then the prevailing party in the action itself and the prevailing party in any separate contested proceeding of the action (by way of example and not of limitation, any motion in the action) shall be entitled to recover, in addition to any other relief, reasonable attorneys' fees and expenses and costs of the action or proceeding.

9.7. Exclusive Agreement; Amendments; Purchase Orders. (a) This Agreement constitutes the exclusive agreement between you and Bind-View relating to its subject matter. It supersedes any and all prior or contemporaneous oral or written agreements, representations, negotiations, or other dealings between you and BindView concerning that subject matter. Neither party is relying on any representation by the other, express or implied, except as specifically set forth in this Agreement or in a document expressly referenced by or incorporated by reference therein. No effect will be given to any click-wrap or browse-wrap license agreement document for Software licensed under this Agreement unless expressly agreed otherwise in writing by the parties. **(b)** This Agreement may be amended only by a written document signed by the parties that specifically identifies this Agreement and expressly states that it is being amended. **(c)** Without limiting subparagraph (b): *(1)* If you provide us or an authorized BindView reseller or distributor with a purchase order, the purchase order will be deemed to be solely a confirmation of the identification of the Software, the number and types of License Units, any maintenance subscription or renewal, and/or any training or professional services, as applicable, and the price thereof; *(2)* regardless whether we sign or otherwise "accept" the purchase order, any other provisions of the purchase order will be given effect if and only if the purchase order meets the conditions of subparagraph (b); and *(3)* endorsement, by a party's clerical or accounting personnel, of a check or similar instrument that contains amendatory language shall not be effective to amend this Agreement.

9.8. Assignment. (a) Either party may assign this Agreement *(1)* to an entity that qualifies as an Affiliate of that party under clause (b) of the definition of Affiliate in Section 1.3, or *(2)* with the prior written consent of the other party. **(b)** In addition, *(1)* you may assign this Agreement without our consent in conjunction with a transfer of duties to another governmental entity, and *(2)* we may assign this Agreement in conjunction with an assignment of substantially all our assets relating specifically to the Software. If we assign substantially all our assets relating specifically to a particular Software product, then we may assign this Agreement

as to such product without assigning it as to other Software products. **(c)** Any other attempted or actual assignment will be void. **(d)** If you assign this Agreement, unless it expressly provides otherwise, your right to use the Software will automatically terminate without the need for notice from us, but the use will transfer. **(e)** Promptly after any assignment, the assigning party and the assignee shall jointly give notice of the assignment to the other party. The assignee shall be deemed to have assumed the assigning party's obligations under, and to have undertaken to be bound by the terms and conditions of, this Agreement. The assignment will not relieve the assigning party of liability for any pre-assignment breach of this Agreement. **(f)** This Agreement will inure to the benefit of, and be binding upon, the successors and permitted assigns of the parties.

9.9. Language. This Agreement and its attachments, if any, are written in and shall be interpreted for all purposes in accordance with the English language as used in the United States of America.

9.10. Force Majeure. Neither party will be liable for performance delays or for nonperformance due to natural disaster, acts of God, labor disputes, government intervention, or other causes beyond its reasonable control. The previous sentence will not apply to failure to pay amounts due hereunder, however, unless such failure results from *(i)* physical damage to the nonpaying party's premises or *(ii)* disruption of banking channels that prevents payments from being made.

9.11. Notices. (a) All notices required by this Agreement must be in writing addressed as indicated on the first page of this Agreement and delivered by *(1)* certified mail return receipt requested, postage prepaid, or *(2)* established overnight air express courier, charges prepaid, with proof of delivery. Notices are effective upon receipt. **(b)** By notice to the other party, either party may change its address for notice.

9.12. Execution; Counterparts. (a) This Agreement and any Schedule may be executed and delivered in separate counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same instrument. Any counterpart may comprise one or more duplicates or duplicate signature pages, any of which may be executed by less than all of the parties provided that each party whose execution is required executes at least one of the same. **(b)** A copy of this Agreement or a signature page thereof, executed on behalf of a party and transmitted to the other party by FAX, or in graphical-image form by email or other electronic transmission, shall be deemed for all purposes to have been executed and delivered by that party to the other party. **(c)** A photocopy of a fully- or partially-executed original of this Agreement, including without limitation a FAX- or graphical-image copy, will be admissible in evidence for all purposes in any proceeding as between the parties to the same extent, if any, as the original.

9.13. No Unannounced Modifications to Signature Documents: By signing and delivering this Agreement and/or any Schedule, exhibit, amendment, or addendum thereto, each party will be deemed to represent to the other that the signing party has not made any changes to such document from the draft(s) originally provided to the other party by the signing party, or vice versa, unless the signing party has expressly called such changes to the other party's attention in writing (e.g., by "redlining" the document or by a comment memo or email).

9.14. Partial Assignment of License in Corporate Divestitures. (a) This Section applies if you either *(1)* assign, to a third party, assets which you use in a portion of your business in which you use the Software (e.g., transfer a division of an agency), or *(2)* assigns, to a third party, all of the stock of an Affiliate of Licensee which uses the Software, or for the benefit of which you use the Software, pursuant to this Agreement. **(b)** In connection with such assignment, and for one (1) year after its effective date, the assignee will have the option, at its election, to enter into a new license agreement with us that is substantially identical to this Agreement, at no additional charge by us. **(c)** The new license agreement will be for some or all of the Software described in this Agreement and for a specified number of the servers, user accounts, or other License Units as to which you are licensed ("Transferred License Units"). The number of License Units for which you remain licensed will be reduced by the number of Transferred License Units. **(d)** The assignee will automatically be a maintenance subscriber for the Transferred License Units, at no additional charge, for the balance of the then-current maintenance period. **(e)** To exercise such option, you and the assignee must jointly give us written notice of the assignee's election. Such notice will be deemed to be *(i)* the assignee's assent to a new license agreement as provided in subparagraph (b), and *(ii)* your consent to the reduction in the number of License Units for which you remain licensed.

10. Confidential Information – Reciprocal Obligation

10.1. Definition. (a) The term "Confidential Information" means *(1)* specific types of information so identified in this Agreement, if any; and *(2)* information and data in written, graphic or machine-readable form which is furnished to one party hereunder ("disclosing party") by the other party ("receiving party") and which is marked "Confidential" or otherwise contains a proprietary legend, **(b)** Without limiting the generality of subparagraph (a): *(1)* the executable code of the Software, and the source code thereof if provided to you, will always be considered to be Confidential Information, and *(2)* "Confidential Information" shall include customer lists, marketing information, and similar information relating to your existing or planned business affairs or those of any of your customers. **(c)** Confidential Information does not include information or data of a disclosing party which, now or in the future, *(1)* is publicly available without breach of this Section or of another confidentiality obligation in favor of the disclosing party, or *(2)* is independently developed by the receiving party without breach of the obligations of this Section, or *(3)* is disclosed to the receiving party by a third party without breach of an obligation of confidence to the disclosing party, or *(4)* is disclosed or used by the receiving party with the written consent of the disclosing party, or *(5)* is disclosed by the receiving party pursuant to legal or administrative process or as otherwise required by law, *(6)* is deemed to be public under the Texas Public Information Act.

10.2. Obligation of Confidence. Both parties will *(1)* use reasonable efforts, but no less than the efforts they use to safeguard their own confidential information, to safeguard any Confidential Information disclosed to them by the other party, and *(2)* not use any such Confidential Information except as permitted by this Agreement.

11. HIPAA Compliance

11.1.   Applicability. These provisions apply, in addition to any confidentiality provisions of this Agreement, if and to the extent that you disclose any "protected health information" ("PHI"), if any, to us, as that term is defined in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

11.2.   HIPAA Compliance. Pursuant to the HIPAA privacy rule, 45 CFR, Part 160-164, we agree that: **(a)** we will not use or further disclose PHI other than as permitted or required by this Agreement or as required by law; **(b)** we will use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement; **(c)** we will report to you any use or disclosure of PHI not provided for by this Agreement of which we become aware; **(d)** we will ensure that any agents, including a subcontractor to whom we provide PHI received from you, or created or received by us on your behalf, agree to the same restrictions and conditions that apply to us with respect to such PHI; **(e)** we will make available PHI in accordance with 45 CFR § 164.526; **(f)** we will make available PHI for amendment and incorporate any amendments to PHI in accordance with 45 CFR § 164.526; **(g)** we will make available PHI required to provide an accounting of disclosures in accordance with 45 CFR § 164.528; **(h)** we will make our internal practices, books, and records to the extent that they relate to the use and disclosure of PHI received from you, or created or received by us on your behalf, available to the secretary of HHS for the purpose of determining your compliance with the HIPAA privacy rule; **(i)** if you determine that we have breached this Section 11, you may terminate this Agreement, effective immediately upon notice of termination (or such other time as stated in such notice), in accordance with the notice- and termination provisions of this Agreement; and **(j)** we will, at any termination of this Agreement, if feasible, return or destroy all PHI received from your or created or received by us on your behalf that we still maintain in any form and retain no copies of such information; or, if such return or destruction is not feasible, extend the protections of this Agreement to PHI and limit further uses and disclosures to those purposes that make the return or destruction of PHI infeasible.

Executed to be effective (when executed by both parties) as of the date executed on behalf of Licensee as indicated below:

LICENSEE, by: **BINDVIEW, by:**

_____   _____   _____   _____
Signature   Date signed   Signature   Date signed

_____   _____   _____   _____
Printed name   Title   Printed name   Title

APPENDIX A
PRODUCT-SPECIFIC LICENSING PROVISIONS

License Unit Definitions, etc.: For each Software product described below, unless expressly agreed otherwise in writing by the parties, the corresponding types of License Unit, and any product-specific provisions applicable to such product, are as follows. As used below, the term "managed", with reference to particular Software and to a particular individual License Unit, includes without limitation use of that Software to run a search ("query") which encompasses that individual License Unit, whether or not such License Unit actually satisfies the search criteria.

BindView Password Self Service (PSS): Individual user who can use the Software to reset his /her own password(s).

BindView RMS Decision Support Center – License Unit: Server machine on which the Software is used.

BindView RMS Risk Management Console software – *License Unit:* Individual administrator who uses the Software (the associated license is sometimes referred to as an "administrator license" or "console license").

BindView RMS Web Console: Automatically licensed with BindView RMS Risk Management Console.

bv-Admin for .NET Web Services – License Unit: managed .NET Web server.

bv-Admin for Group Policy Objects – License Unit: managed user account.

bv-Admin for Microsoft Exchange – License Unit: managed Microsoft Exchange mailbox.

bv-Admin for Microsoft Exchange Migration – License Unit: migrated Microsoft Exchange mailbox.

bv-Admin for Microsoft Windows Migration – License Unit: migrated Windows domain user account.

bv-Admin for Novell Migration – License Unit: migrated NDS user account.

bv-Admin for Novell NDS – License Unit: managed NDS user account.

bv-Admin for Windows – License Unit: managed Windows domain user account.

bv-Control for Active Directory – License Unit: managed Active Directory user account.

bv-Control for Active Directory GPO reporting capability – License Unit: managed Active Directory user account. (A license for use of the GPO reporting capability of the bv-Control for Active Directory software is separate and distinct from a license to use the bv-Control for Active Directory software for other purposes.)

bv-Control for Desktops (formerly *NETinventory) – License Unit:* managed node; a "node" is a collection of hardware and software that share a single network identification code in a computer network.

bv-Control for Internet Security (formerly *HackerShield) – License Unit:* Ip device or subnet scanned using the Software.

bv-Control for Microsoft Exchange: License Unit: managed Microsoft Exchange mailbox and managed server machine.

bv-Control IntelliPACs for Microsoft Exchange: License Unit: managed server machine.

bv-Control for NDS eDirectory – License Unit: managed NDS user account.

bv-Control for NetWare – License Unit: managed Netware server machine.

bv-Control for OS/400 – License Unit: model number and software level - you may not use the Software on a model number or software level except as stated in this Agreement.

bv-Control for SQL Server – License Unit: server on which are stored any SQL Server database on which you report.

bv-Control for UNIX – License Unit: managed UNIX Host. "UNIX Host" means any server machine or workstation machine that runs a UNIX-type operating system, but any warranties for the Software apply only to particular UNIX-type operating systems as specified in the Documentation

bv-Control for Web services: managed IIS machine.

bv-Control for Windows 2000 (formerly *NOSadmin for NT) – License Unit:* managed server machine, managed workstation machine, and managed Windows domain user account.

bv-Control IntelliPACs for Windows 2000 – License Unit: managed server machine and managed workstation machine.

Audit for OS/400; Client/Server for OS/400; Examiner for OS/400; Monitor for OS/400 – License Unit: model number and software level -- you may not use the Software on or for a model number or software level other than as stated in this Agreement.

NETrc – License Unit: managed node; a "node" is a collection of hardware and software that share a single network identification code in a computer network.

NOSadmin for NetWare 3 – License Unit: managed server machine. We do not plan to release future versions of the product; we will provide telephone support, and will attempt to provide bug fixes, only to the extent that we have personnel who have the training, experience, and available time to do so.

bv-Control for SAP – Special Provisions:

(a) Each "System" that you acquire includes a Windows-platform computer (the "Hardware") configured with licensed copies of operating-system software, Web-server software, and SQL-database software ("Third-Party Software"), as specified in the Documentation, to be either provided by you or purchased by us on your behalf (in which case you will reimburse us). We will configure the Hardware and Third-Party Software. **(b)** WE MAKE NO WARRANTIES concerning the Hardware or Third-Party Software, but upon your request we will pass through to you any vendor warranties for the same. You will be responsible for all maintenance and required repair of the Hardware and Third-Party Software, if any, at your expense. **(c)** To use the System, you will need one or more client machines configured with either Internet Explorer 4.X or Netscape Navigator 4.7, or greater, to be provided by you. You are responsible for providing a minimum of two authorized user IDs for each target SAP R/3 client to be accessed by the System and one license for the use of MS Excel on the server. **(d)** You may not install or use the Software on any computer other than the Hardware unless *(1)* we approve such installation in writing in advance, or *(2)* you are replacing the Hardware, permanently or temporarily (e.g., because of equipment failure), by a new machine within the same network. **(e)** The License Unit for the Software is each distinct SAP user account that is managed using the Software. **(f)** We reserve the right to develop future versions of the Software that require hardware of greater capability than the Hardware; if we send you any such future versions with notice of the increased hardware requirements, that will not breach any warranty.

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Appendix D
BindView Development Corporation

Product Description	Software Part Number	TX DIR Software Purchase Price	TX DIR Annual Maintenance Part Number	TX DIR Annual Maintenance Price	List Price	TX DIR Discount	TX DIR Discount for Education Institutions	TX DIR Purchase Price	TX DIR Purchase Price for Education Institutions	TX DIR Annual Maintenance	TX DIR Annual Maintenance for Education Institutions
BINDVIEW Enterprise Management Solutions (EMS)/Risk Management Solutions (RMS) Product Family											
BINDVIEW EMS CONSOLE Enterprise Console (price per 1 user, non-concurrent)	EMS-CON-1	$1,209.00	M-EMS-CON-1	$241.80	$1,995.00	39%	50%	$1,209.01	$1,000.00	$241.80	$200.00
EMS Documentation 1 Set	EMS-DOCS	$48.00	N/A	$9.70	$80.00	39%	50%	$48.48	$40.10	$9.70	$8.02
BINDVIEW RMS CONSOLE RMS Console v7(1)	RMS-CON-1	$1,209.00	M-RMS-CON-1	$241.80	$1,995.00	39%	50%	$1,209.01	$1,000.00	$241.80	$200.00
bv-Admin Family of Administration and Migration Management Products											
bv-Admin For Windows 2000 (per managed user) (requires bv-Admin Server)	BVADMIN	$7.00	M-BVADMIN	$1.45	$11.95	39%	50%	$7.24	$5.99	$1.45	$1.20
bv-Admin for Win 2000 Migration per managed user (requires bv-Admin Windows 2000)	BVMIGR-W2K	$6.00	M-BVMIGR-W2K	$1.21	$9.95	39%	50%	$6.03	$4.99	$1.21	$1.00
bv-Admin for Novell NDS per managed user (requires bv-Admin Windows 2000)	BVADMIN-NDSPL	$3.00	M-BVADMIN-NDSPL	$0.60	$4.95	39%	50%	$3.00	$2.48	$0.60	$0.50
bv-Admin For NDS Migration per managed user (requires bv-Admin for NDS and BV-Admin for W2K Migration)	BVMIGR-NDS	$2.00	M-BVMIGR-NDS	$0.48	$3.95	39%	50%	$2.39	$1.98	$0.48	$0.40
bv-Admin For Exchange per managed user (requires bv-Admin Windows 2000)	BVADMIN-EXCHPL	$3.00	M-BVADMIN-EXCHPL	$0.60	$4.95	39%	50%	$3.00	$2.48	$0.60	$0.50

Product	Part No.	M-Part No.			39%	50%				
bv-Control for NetWare per 1 server (requires BindView RMS Console/per server)	BVC-NW	M-BVC-NW	$482.00	$96.36	$795.00	39%	50%	$481.78	$398.50	$96.36	$79.70
bv-Control for NDS eDirectory per user object (requires BindView RMS Console)	BVC-NDS	M-BVC-NDS	$11.00	$2.18	$17.95	39%	50%	$10.88	$9.00	$2.18	$1.80
bv-Control for Windows 2000 (NT) per server (requires BindView RMS Console)	BVC-W2K-S	M-BVC-W2K-S	$482.00	$96.36	$795.00	39%	50%	$481.78	$398.50	$96.36	$79.70
bv-Control for Windows 2000 (NT) per domain user (requires BindView RMS Console)	BVC-W2K-U	M-BVC-W2K-U	$11.00	$2.18	$17.95	39%	50%	$10.88	$9.00	$2.18	$1.80
bv-Control for Windows 2000 (NT) per workstation (requires BindView RMS Console)	BVC-W2K-W	M-BVC-W2K-W	$8.00	$1.57	$12.95	39%	50%	$7.85	$6.49	$1.57	$1.30
bv-Control for Windows 2000 (NT) & bv-Control for NDS Bundle per user object for both NDS & W2K (requires BindView RMS Console)	BVC-DUAL-U	M-BVC-DUAL-U	$19.00	$3.87	$31.95	39%	50%	$19.36	$16.02	$3.87	$3.20
bv-Control for Active Directory per user object (includes GPO licenses) (requires BindView RMS Console)	BVC-AD-U	M-BVC-AD-U	$4.00	$0.72	$5.95	39%	50%	$3.61	$2.98	$0.72	$0.60
bv-Control for Desktops per 100 Nodes (requires BindView EMS Console)	NETN-100	M-NETN-100	$1,512.00	$302.40	$2,495.00	39%	50%	$1,512.01	$1,250.63	$302.40	$250.13
bv-Control for MS Exchange per server (server license includes IntelliPACS) (requires BindView RMS Console)	BVC-XCH-S	M-BVC-XCH-S	$603.00	$120.60	$995.00	39%	50%	$602.99	$498.75	$120.60	$99.75
bv-Control for MS Exchange per mailbox (requires server license) (requires BindView RMS Console)	BVC-XCH-M	M-BVC-XCH-M	$8.00	$1.57	$12.95	39%	50%	$7.85	$6.49	$1.57	$1.30
bv-Control for Internet Security per IP address	BVC-INS-IP	M-BVC-INS-IP	$12.00	$2.42	$19.95	39%	50%	$12.09	$10.00	$2.42	$2.00
bv-Control for Internet Security Class C subnet	BVC-INS-C	M-BVC-INS-C	$2,421.00	$484.21	$3,995.00	39%	50%	$2,421.04	$2,002.51	$484.21	$400.50
bv-Control for Internet Security Class B subnet	BVC-INS-B	M-BVC-INS-B	$19,393.00	$3,878.52	$32,000.00	39%	50%	$19,392.58	$16,040.13	$3,878.52	$3,208.03

Notes:
1. When ordering maintenance renewal, customer should indicate by replacing the part no. prefix "M" with an "R".

Maintenance and Renewal Terms

Maintenance Renewal Schedule

If Purchased by Expiration Date

1 day to 1 Month Post Expiration	20% of net**
2 Months Post Expiration	25% of list
3 Months Post Expiration	30% " "
4 Months Post Expiration	35% " "
5 Months Post Expiration	40% " "
6 Months Post Expiration	45% " "
7 Months Post Expiration	50% " "
8 Months Post Expiration	55% " "
9 Months Post Expiration	60% " "
10 Months Post Expiration	65% " "
11 Months Post Expiration	70% " "
12 Months Post Expiration	75% " "
13 Months Post Expiration	80% " "
	Expired (List Price)

Prepaid Maintenance

BindView offers discounts to multi year Maintenance based on pre-payment under the following schedule.
The amount is calculated from the net price for all years of pre-payment at earned percentage.

One Year:	20%
Two Years:	18%
Three Years:	17%
Four Years:	16%
Five Years:	15%

** Not to exceed 40% discount from current list price, renewal of all original license required,
good for 3 years from original purchase. "net" based on original license discount.

Professional Services

		Product Part #	List Price	No discounted pricing on Professional Services
EMS Console + NETInventory (HSTN)	1 Day/1 Person	TRNNG-620-HSTNNET	$695.00	
EMS Console + NETinventory (PRVT)	1 Day/8 People	TRNNG-620-PRVTNET	$4,000.00	
RMS Console Course (HSTN)	1 day/1 person	TRNNG-624-HSTNRMS	$695.00	
RMS Console Course (PRVT)	1 Day/8 People	TRNNG-624-PRVTRMS	$4,000.00	
bv-Control for NDS & NetWare Course (HSTN)	1 Day/1 Person	TRNNG-618-HSTNNW	$695.00	
bv-Control for NDS & NetWare Course (PRVT)	1 Day/8 People	TRNNG-618-PRVTNW	$4,000.00	
bv-Control for Windows/PACS Course (HSTN)	2 Days/1 Person	TRNNG-619-HSTNNT	$1,395.00	
bv-Control for Windows/PACS Course (PRVT)	2 Days/8 People	TRNNG-619-PRVTNT	$8,000.00	
bv-Control for Microsoft Exchange/PACS (HSTN)	1 day/1 person	TRNNG-625-HSTNEXC	$695.00	
bv-Control for Microsoft Exchange/PACS (PRVT)	1 Day/8 People	TRNNG-625-PRVTEXC	$4,000.00	
bv-Admin for NetWare Course (HSTN)	2 Days/1 Person	TRNNG-640-HSTNNW	$1,390.00	
bv-Admin for NetWare Course (PRVT)	2 Days/8 People	TRNNG-640-PRVTNW	$8,000.00	
bv-Admin for Windows/PACS Course (HSTN)	2 Days/1 Person	TRNNG-641-HSTNNT	$1,390.00	
bv-Admin for Windows/PACS Course (PRVT)	2 Days/8 People	TRNNG-641-PRVTNT	$8,000.00	
bv-Admin for Exchange/PACS Course (HSTN)	1 Day/1 Person	TRNNG-642-HSTNEXC	$695.00	
bv-Admin for Exchange/PACS Course (PRVT)	1 Day/8 People	TRNNG-642-PRVTEXC	$4,000.00	
On-Site Training Add-On (PRVT)	1 Day/Add 1 Person	TRNNG-PRVT-ADDON	$400.00	
Regional Public Training Suite	1 Suite/1 Person	TRNNG-REGIONAL	$3,000.00	
Travel-Related Expenses	as incurred - Billed A	TRAVEL EXPENSES		
Consulting— bv-Admin (PRVT)	1 Day/2 Days Min	CNSLTNG-PRVT-ADMIN	$2,000.00	
Consulting— bv-Control (PRVT)	1 Day/2 Days Min	CNSLTNG-PRVT-CNTRL	$2,000.00	
Consulting— Partner Services (PRVT)	Partners ONLY	CNSLTNG-PRVT-PRTNR	$1,500.00	
Consulting— Security Services (PRVT)	Customized	CNSLTNG-PRVT-SCRTY		
Consulting— Migration Services (PRVT)	Customized	CNSLTNG-PRVT-MGRTN		
Consulting— Scripting Services (PRVT)-Per Hour	Per Hour	CNSLTNG-PRVT-SCRIPT	$150.00	
On-Site Consulting–Hourly Add-On (PRVT)	Add 1 Hour	CNSLTNG-PRVT-HRLY	$250.00	

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